

NOTICE  
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2017 IL App (5th) 140455-U

NO. 5-14-0455

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 11-CF-1241
	)	
GREGORY MUSE,	)	Honorable
	)	Robert B. Haida,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE BARBERIS delivered the judgment of the court.  
Justices Welch and Chapman concurred in the judgment.

**ORDER**

¶ 1 *Held*: The circuit court had sufficient knowledge of the evidence, despite not reviewing transcripts of the pretrial motions, and, therefore, did not err in ruling on the posttrial motion.

¶ 2 The defendant, Gregory Muse, was convicted of first-degree felony murder (720 ILCS 5/9-1(a)(3) (West 2010)) predicated upon attempted armed robbery (720 ILCS 5/8-4(a) (West 2010)) after a bench trial in the circuit court of St. Clair County. At sentencing, the defendant received mandatory life as a habitual criminal. He appeals. For the following reasons, we affirm the circuit court's order.

¶ 3 On August 27, 2011, the defendant and a coconspirator attempted to rob a pawn shop in East St. Louis, Illinois. The pawn shop proprietor killed the defendant's coconspirator who was attempting to flee. The defendant was subsequently charged by indictment with first-degree felony murder.

¶ 4 On April 27, 2012, the defendant filed numerous pretrial motions challenging the admissibility of evidence, which were heard by Judge Baricevic. For the purposes of this appeal, we will address three of these motions. First, the defendant filed a motion to quash arrest and suppress evidence, which challenged East St. Louis Police Officer Ronald McClellan's (McClellan) legal authority to stop the defendant pursuant to *Terry* and search his blue bag based on probable cause. Second, the defendant filed a motion *in limine*, which challenged the admissibility of the defendant's statement made to McClellan during his arrest. Lastly, the defendant filed a motion to suppress confession, which challenged the admissibility of the defendant's confessions obtained by Agent Benjamin Koch (Koch) of the Illinois State Police (ISP), and the subsequent videotaped confession obtained by East St. Louis Police Detective Ken Berry (Berry) and ISP Special Agent Jamie Brunnworth (Brunnworth). The defendant argued that his confessions were involuntary in that Koch promised him leniency if he implicated himself in the robbery. Moreover, the defendant argued that at the time of the videotaped confession, he had a history of heart attacks and felt "off base" due to numbness from his heart condition. The defendant argued that the confessions should be suppressed given Koch's alleged promises to "eat the murder if he takes the robbery," and provide medical treatment if he confessed.

¶ 5 On June 12, 2012, at the hearing on the motion to suppress confession, Koch and the defendant testified to the conversation that took place prior to the defendant's videotaped confession with Berry and Brunnworth. Koch and the defendant did not testify at another pretrial hearing or trial.

¶ 6 On June 19, 2012, Judge Baricevic denied all of the defendant's pretrial motions, except the motion to suppress the defendant's confession obtained by Koch. Judge Baricevic found that this confession was in violation of *Miranda*. As such, he ordered the suppression of all comments made by the defendant to Koch.

¶ 7 On March 5, 2013, the defendant filed a motion to reconsider the motion to suppress confession as it applied to the defendant's recorded confession before Berry and Brunnworth. The defendant argued, based on the earlier order which suppressed the defendant's confession obtained by Koch, that the defendant's videotaped confession was not voluntary, given Koch's alleged promises. At the hearing, no additional testimony was given. Judge Baricevic denied the defendant's motion to reconsider the motion to suppress the videotaped confession.

¶ 8 On March 12, 2013, Judge Cook presided over the defendant's jury trial. The defendant did not testify. The following day, the jury returned a guilty verdict for first-degree felony murder. Accordingly, the defendant was convicted and a sentencing date was set.

¶ 9 On April 5, 2013, prior to the sentencing hearing, the defendant filed a posttrial motion claiming he was denied a fair trial.

¶ 10 On May 22, 2013, the State filed a motion for substitution of judge for cause, alleging actual prejudice by Judge Cook against the State. The case was reassigned to Judge Haida.

¶ 11 On August 16, 2013, the defendant filed an amended posttrial motion alleging that Judge Baricevic erred in his rulings on the pretrial motions. Additionally, he alleged that he was denied a fair trial because Judge Cook was the subject of an undisclosed federal drug criminal investigation, and had slurred speech as he instructed the jury.

¶ 12 On October 30, 2013, Judge Haida granted the defendant's amended posttrial motion and ordered a new trial. For this trial, the defendant waived his right to a jury trial.

¶ 13 On April 8, 2014, Judge Haida presided over the defendant's bench trial. The defendant did not testify. Once again, the defendant was convicted of first-degree felony murder.

¶ 14 On April 10, 2014, the defendant filed a posttrial motion claiming trial errors and renewing his claims of errors made by Judge Baricevic in his pretrial rulings. The circuit court denied the defendant's posttrial motion.

¶ 15 On July 11, 2014, at the sentencing hearing, Judge Haida denied the defendant's posttrial motion and sentenced him to mandatory life as a habitual criminal. The defendant filed a timely notice of appeal.

¶ 16 The defendant first argues on appeal that the circuit court abused its discretion by failing to demonstrate an understanding of the *Montgomery* balancing test before it allowed the admission of the defendant's prior convictions to be used for impeachment

purposes. *People v. Montgomery*, 47 Ill. 2d 510, 518 (1971). The State argues, and the defendant concedes, that *Luce v. United States* controls the outcome of this case and, therefore, this issue is forfeited. *Luce v. United States*, 469 U.S. 38, 41-43 (1984). In *Luce*, the United States Supreme Court held that "to raise and preserve for review the claim of improper impeachment with a prior conviction, a defendant must testify." *Luce*, 469 U.S. at 43. Since the defendant did not testify at the bench trial, the issue is forfeited.

¶ 17 Next, the defendant claims that Judge Haida erred when he ruled on the posttrial motion, which included challenges to Judge Baricevic's pretrial orders, asserting that Judge Haida ruled without reviewing the transcripts of the pretrial hearings. In response, the State argues that Judge Haida had sufficient knowledge of the evidence to rule on the posttrial motion because the record shows that he did review the transcripts of the pretrial hearings. Additionally, the State argues that Judge Haida reviewed Judge Baricevic's written pretrial orders and jury trial transcripts, as well as heard all testimony and closing arguments presented at the defendant's bench trial, in which he presided. Upon a review of the record, we find that Judge Haida did not review the transcripts of the pretrial hearings; however, we agree with the State that Judge Haida had sufficient knowledge to rule on the defendant's posttrial motion. Thus, no reversible error occurred as a result. See *People v. Hampton*, 223 Ill. App. 3d 1088, 1096 (1991).

¶ 18 A defendant is not denied a fair trial when posttrial motions and sentencing matters are heard by a different judge absent a showing that the second judge did not adequately review the trial evidence or understand the case. *Hampton*, 223 Ill. App. 3d at 1096. The reviewing court may consider evidence from the motion hearing and also

consider the evidence adduced at trial. *People v. Richardson*, 234 Ill. 2d 233, 252 (2009). A reviewing court is not limited to the evidence presented at the court's pretrial suppression hearing, but may also consider evidence that was offered at the defendant's trial. *People v. Patterson*, 154 Ill. 2d 414, 450 (1992); *People v. Melock*, 149 Ill. 2d 423, 433 (1992) (citing *People v. Caballero*, 102 Ill. 2d 23, 36 (1984)). In reviewing the circuit court's denial of a suppression motion, the reviewing court will accord great deference to the circuit court's factual findings, and will reverse those findings only if they are against the manifest weight of the evidence; however, we will review *de novo* the ultimate question of the defendant's legal challenge to the denial of his motion to suppress. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001).

¶ 19 On appeal, the defendant relies solely on the allegation that Judge Haida erred in failing to review the transcripts of the pretrial hearings. The defendant argues that it is "impossible" for the court to determine whether Judge Baricevic's denial of the pretrial motions was "properly reasoned and supported." We disagree.

¶ 20 On October 30, 2013, prior to granting the defendant's first posttrial motion, Judge Haida stated the following on the record:

"THE COURT: I have considered the facts, read the transcript which contained the facts that were presented to the jury. I've also reviewed the court orders entered by Judge Baricevic in the pretrial phase of this matter. I have reviewed the pleadings filed post-trial by both the state and defense counsel and have done a large amount of research in conjunction with the review of the cases

and points of authority cited by both sides. And I've considered the arguments presented today."

¶ 21 As such, Judge Haida set aside the defendant's conviction and granted him a new trial.

¶ 22 During the April 8, 2014, bench trial, Judge Haida stated the following on the record:

"THE COURT: Some of the proceedings were conducted by other judges. I've reviewed the court orders. I will not second-guess the findings of the trier of fact, Judge Baricevic, in both the motion to suppress confession and the motion to quash arrest. And I will deny that portion of the post-trial motion."

¶ 23 On July 11, 2014, Judge Haida entered an order denying the defendant's posttrial motion at the sentencing hearing.

¶ 24 We first note that the record demonstrates that the transcripts of the pretrial hearings, which included the June 12, 2012, hearing when the defendant testified, were not certified and file stamped until September 16, 2014, roughly two months after Judge Haida entered his July 11, 2014, order. Accordingly, on review, we find that Judge Haida could not have reviewed the transcripts of the pretrial hearings prior to entering the order. Regardless, we find that he had sufficient knowledge and a thorough understanding of the details of this case to rule on July 11, 2014.

¶ 25 First, we find that Judge Haida reviewed the transcripts of the March 12, 2013, jury trial. The record shows that the testimony presented at the defendant's jury trial contained similar testimony presented during the motion to quash arrest and suppress

evidence, as well as the motion *in limine*. During both proceedings, McClellan, the arresting officer, testified that within 15 minutes of the robbery, the defendant was located in close proximity, approximately one block, from the pawn shop. When the officer found the defendant, he was short of breath and sweating profusely, as well as clutching a partially open blue bag containing items taken during the robbery, which McClellan could see in plain-view. McClellan further testified to the statement made by the defendant as he was arrested and placed in the squad car, which implicated his involvement in the robbery.

¶ 26 Second, Judge Haida reviewed Judge Baricevic's pretrial orders regarding the motion to suppress confession; motion to quash arrest and suppress evidence; and the subsequent motion to reconsider the motion to suppress his videotaped confession. The pretrial orders that Judge Haida reviewed were written in great detail, as Judge Baricevic highlighted the relevant testimony and factual findings he weighed in formulating his reasoning. We provide Judge Baricevic's reasoning for each motion below.

¶ 27 We first address Judge Baricevic's order, which suppressed the confession obtained by Koch, in which he wrote the following:

"The defendant was without question in custody. While in custody he was confronted by S/A Koch of the Illinois State Police. In my opinion, the line of questioning Agent Koch began was interrogation. It was designed to get information that would assist in the investigation. Agent Koch, however, ignored his obligation to comply with The Supreme Court Rules as to *Miranda*. Therefore, all comments made by defendant Muse to Agent Koch are suppressed."

Judge Baricevic found, however, that the videotaped confession obtained hours later by Berry and Brunnworth was "voluntarily made." He found that the defendant was "adequately *Mirandized*" and knowingly waived his *Miranda* rights. Judge Baricevic determined that the defendant engaged in an "exceptionally casual" conversation with the police and did not request medical help or exhibit any signs of "discomfort or concern for his own health," and that "the defendant \*\*\* moved without difficulty or pain." He further found that the defendant was "alert" and "his responses to questions were "appropriate"; thus, the police response was reasonable and the "defendant's due process rights were not violated."

¶ 28 We next address Judge Baricevic's order regarding the motion to quash arrest and suppress arrest, in which he wrote the following:

"Police had a description of an individual alleged to have committed an armed robbery and the direction he fled. Officer went in that direction and found the defendant matching the description close in time and space to the scene of the crime. The officer certainly enjoyed sufficient evidence for a *Terry* stop and a search for his safety. That search produced additional evidence that supported probable cause for defendant's arrest."

¶ 29 Lastly, in Judge Baricevic's order regarding the motion to reconsider the motion to suppress the videotaped confession, he restated his finding that the defendant's recorded statement was "voluntarily given" and "reliable" based on a preponderance of the evidence.

¶ 30 Third, Judge Haida reviewed the posttrial pleadings filed by both parties and conducted a large amount of research in conjunction with his review of the cases and points of authority cited by both parties. Additionally, a review of the record shows that the posttrial pleadings included the same claims raised in the defendant's pretrial motions, as well as the constitutional basis made in support.

¶ 31 Fourth, prior to ruling on the defendant's posttrial motion, Judge Haida presided over the defendant's bench trial, where he heard the same testimony given by McClellan at the defendant's jury trial. At both the defendant's bench and jury trials, McClellan explained his reasoning for stopping the defendant, searching the blue bag, and taking him into custody. Once again, McClellan testified to the statement made by the defendant that implicated his involvement in the robbery. In addition, Judge Haida watched the videotaped interview, and heard closing arguments, which included renewed arguments on the defendant's pretrial motions.

¶ 32 Based on a review of the record, we find that Judge Haida was aware at the July 11, 2014, sentencing hearing that the defendant had testified on June 12, 2012. In particular, the defense counsel argued the following:

"MS. CONNER: In this case we did establish that an officer did talk to Gregory while he was in custody and was asking him questions. Gregory *testified* that he was told to admit an involvement in the armed robbery and he wouldn't go down for the murder." (Emphasis added.)

¶ 33 Accordingly, a review of the record supports a finding that Judge Haida had sufficient knowledge of all evidence, given that Judge Haida presided over the

defendant's bench trial, and Judge Baricevic provided thorough orders detailing his reasoning for ruling on the pretrial motions. As such, we find that Judge Haida adequately reviewed and had an understanding of the case in order to appropriately rule on the posttrial motion, even though he did not review the transcripts of the pretrial hearings.

¶ 34 We find that the defendant failed to show that Judge Haida lacked sufficient knowledge of the evidence to rule on the defendant's posttrial motion. Thus, we find the circuit court did not err in ruling on the defendant's posttrial motion. For the foregoing reasons, the order of the circuit court of St. Clair County is hereby affirmed.

¶ 35 Affirmed.